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No. 80-6680

In the Supreme Court of the United States

OCTOBER TERM, 1981

CHARLES RONALD MCELROY, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether, in a prosecution under 18 U.S.C. 2314 for transporting securities "forged" in interstate commerce, the government is required to prove that the security in question was forged before it crossed a state line.

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OPINION BELOW

The opinion of the court of appeals en banc (J.A. 78-100) is reported at 644 F.2d 274.

JURISDICTION

The judgment of the court of appeals (Pet. App. 4a) was entered on March 17, 1981. The petition for a writ of certiorari was filed on May 15, 1981, and was granted on October 5, 1981 (J.A. 101). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

18 U.S.C. 2314 provides in pertinent part:

> Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited * * *.
>
> Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

STATEMENT

Following a jury trial in the United States District Court for the Western District of Pennsylvania, petitioner was convicted on two counts of transporting a forged check in interstate commerce, in violation of 18 U.S.C. 2314, and one count of transporting a stolen automobile in interstate commerce, in violation of the Dyer Act, 18 U.S.C. 2312. He was sentenced to concurrent terms of seven years' imprisonment on the forged check counts and five years' imprisonment for the Dyer Act offense. The court of appeals reversed the Dyer Act conviction and otherwise affirmed (J.A. 78-100).

1. The evidence at trial established that in early 1977 blank checks for an account at the Dollar Savings & Trust Company, an Ohio bank, were stolen from a local of the Laborers' International Union of North America in Youngstown, Ohio (J.A. 41-42).

On October 16, 1978, petitioner approached Albert E. Girardi, a salesman for Don Allen Chevrolet in Pittsburgh, Pennsylvania, and inquired about purchasing a used Chevrolet Corvette. After test driving a 1974 model that Girardi had on the lot, peti-

tioner indicated that he was interested in the car and that he would return the next morning to purchase it with a credit union check. Petitioner told Girardi he resided in Warrenville Heights, Ohio, and stated that his name was "William Jones" (J.A. 5-6).

The next day, petitioner returned to the Don Allen dealership as promised and tendered a check drawn on the Laborers' International account in the amount of $6,706 to cover the purchase price of the car. Petitioner asked that the car be titled in Ohio (J.A. 13). He supplied Girardi with a couple of pieces of identification from the State of Ohio in the name of "William Jones" (J.A. 8). After tendering the check, petitioner drove off with the car (J.A. 13).

The following morning Girardi called the Dollar Savings & Trust Company Bank in Youngstown and learned that the account had been closed because checks had been stolen (J.A. 53). The check written to Don Allen Chevrolet by petitioner was one of those stolen from the Union in Youngstown, Ohio, and the signature on the check was forged. No attempt was made by Don Allen to collect on the check (J.A. 54).

On December 5, 1978, petitioner appeared at Rini Marine Sales and Service in Beaver Falls, Pennsylvania and expressed an interest in purchasing a boat. Once again he gave an Ohio address and identified himself as "William Jones." He informed Philip Rini, the owner of the business, that he would have to obtain the money from his credit union (J.A. 20). About a week later, petitioner telephoned to say that he was going to buy a boat and trailer that day with a check from his credit union. He telephoned again later that evening and asked Rini if he would wait for him, stating that he was at a rest stop on the Ohio Turnpike (J.A. 21).

Thereafter, petitioner arrived at Rini Sales in a pickup truck bearing Ohio license plates, which subsequently proved to be registered to another vehicle (J.A. 21, 24-25). Petitioner handed Rini a Laborers' International check in the amount of $6,695 that had already been mechanically imprinted (J.A. 22). After Rini prepared the paperwork for the transaction, petitioner signed a bill of sale indicating that the boat and trailer would be registered in Ohio. Petitioner then drove off with the boat and trailer that night (J.A. 25-26).

Rini, who also happened to be the police chief in a neighboring community, became suspicious the following morning and telephoned the Youngstown bank. He learned that the check had been stolen from the Union and that the signature had been forged (J.A. 31). As a result, he made no attempt to negotiate the check (J.A. 31, 80).[1]

2. Over petitioner's objection, the district court instructed the jury as follows (J.A. 70-71):

> Now, the Government must show that the checks were transported in interstate commerce in a forged condition. However, the transportation within the destination state here, Pennsylvania, may be considered transportation in interstate commerce if it is a continuation of the movement that began out of state.
>
> * * * * *
>
> Now, if you believe that the Government has shown that the Defendant transported the checks while they were in a forged condition within the State of Pennsylvania, the requirements of the

[1] Both Girardi and Rini identified petitioner, both at a pretrial lineup and at trial, as the "William Jones" with whom they had done business (J.A. 16, 36, 38).

> law are satisfied if that transportation was part of interstate commerce. In other words, the check had to originate at sometime in Ohio and had to have been transported at sometime in Pennsylvania in order to effect interstate commerce. So the Government must prove this Defendant transported the checks involved in Counts 1 and 3 of the indictment in interstate commerce between Ohio and Pennsylvania, but need not prove the place in Ohio from which the checks started or from where the Defendant started.[2]

3. The court of appeals heard the case en banc and affirmed petitioner's convictions under Section 2314.[3] The majority opinion, joined by six of the ten judges, held that the government was not required to prove that the checks were forged before they crossed a state line. The majority expressly declined to follow the contrary view expressed by three other circuits. See *United States* v. *Sparrow*, 635 F.2d 794 (10th Cir. 1980) (en banc); *United States* v. *Hilyer*, 543 F.2d 41 (8th Cir. 1976); *United States* v. *Owens*, 460 F.2d 467 (5th Cir. 1972). It noted (J.A. 83; footnote omitted) that the language of the statute "does not state that the checks must be forged before interstate transportation begins. Transportation in interstate commerce has a broader meaning." The majority applied this broader interpretation as follows (J.A. 86):

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[2] The court also gave a seemingly inconsistent instruction. It had previously charged (J.A. 69-70; emphasis added): "[T]his Defendant had to know at the time that *when he brought that check across the state line* that it was false, it was a false check, it was a counterfeited, forged check * * *."

[3] The majority reversed the conviction based on the Dyer Act for insufficient evidence (J.A. 87-89).

> In this case, therefore, a trip by the defendant from Ohio to Pennsylvania to transact business would put him in interstate commerce. * * * At some time during this travel, the defendant transported the checks in a forged condition and later delivered them to the car and boat dealers. It is immaterial whether the signatures were forged in Ohio or in Pennsylvania. If at any point in the interstate movement the check was in a forged condition, the statute was satisfied.

Three of the four judges who did not join the majority opinion nonetheless expressly agreed with the majority's analysis of the meaning of "interstate commerce" as used in Section 2314. Judges Adams and Seitz dissented only from that part of the majority opinion that reversed petitioner's Dyer Act conviction (J.A. 89-91).

Judge Garth agreed with the reversal of that conviction (J.A. 91). He also agreed with the conclusion of the majority that the government need not prove that the checks had been forged at the time they were transported across state lines in order to establish the interstate commerce element of Section 2314 (J.A. 92-94). He would, however, have reversed petitioner's Section 2314 convictions because he believed that there was insufficient evidence for a jury to find that petitioner had transported the checks—in either their blank or their forged condition—across state lines and because he believed that the jury charge did not clearly require a finding that it was petitioner who transported the checks across the state line (J.A. 95-96).[4]

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[4] The majority specifically considered the sufficiency of the evidence point and concluded (J.A. 87) that "[t]he jury was free to find that on each occasion the defendant made a trip

Judge Higginbotham alone expressed the view that petitioner could not be convicted under the charged language of Section 2314 unless the checks were forged at the time they crossed the state line (J.A. 97-100).[5]

SUMMARY OF ARGUMENT

A. Congress, in enacting 18 U.S.C. 2314, did not make it a crime to transport a forged security across a state border, but instead declared the crime to be transporting a forged security in "interstate commerce." Thus, the scope of this provision can be determined only by ascertaining what Congress intended by using the phrase "interstate commerce."

B. When the "interstate commerce" language was selected in the National Motor Vehicle Theft Act ("Dyer Act") (ch. 89, 41 Stat. 324) and included in the National Stolen Property Act (ch. 333, 48 Stat. 794) as the means of federalizing various crimes touching more than one state, it already had been the subject of numerous decisions of this Court. See, *e.g.*, *International Textbook Co.* v. *Pigg*, 217 U.S. 91 (1910); *Champion* v. *Ames*, 188 U.S. 321 (1903); *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U.S. 1 (1877). These decisions make clear that interstate commerce is a concept that expands beyond simply the act of crossing a state line. It involves a series of activities that

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from Ohio to Pennsylvania, carrying with him a check that was forged either in Ohio or Pennsylvania, but in any event before the interstate travel terminated." Petitioner presented the sufficiency issue in his petition for a writ of certiorari, but this Court's grant of the petition was limited to the statutory interpretation issue (J.A. 101).

[5] Judge Higginbotham, however, would have permitted the government to retry petitioner on the Section 2314 counts, under revised jury instructions (J.A. 100).

begins with the initial movement in the state of origin (*Reid* v. *Colorado*, 187 U.S. 137 (1902); *Coe* v. *Errol*, 116 U.S. 517 (1886)) and does not end until the transportation is completed at the state of destination (*Champion* v. *Ames*, *supra*, 188 U.S. at 358-359; *Brown* v. *Houston*, 114 U.S. 622, 634 (1885)). Representative Dyer had these cases in mind when he drafted the National Motor Vehicle Theft Act or Dyer Act, which was the precursor to Section 2314. See H.R. Rep. No. 312, 66th Cong., 1st Sess. 3-4 (1919); 58 Cong. Rec. 5472 (1919) (remarks of Rep. Dyer). Thus, the language of the statute, understood in context, can readily be applied to the situation where the actual forgery occurs after the security arrives within the state of destination so long as it happens before the security reaches its final destination.

To limit the statute by precluding its application to petitioner would be clearly inconsistent with the general intent of Congress to halt frauds committed in interstate commerce through the use of forged securities. See H.R. Rep. No. 79, 71st Cong., 2d Sess. 1 (1929); *United States* v. *Sheridan*, 329 U.S. 379, 384-385, 389-390 (1946). It simply defies credulity to believe that Congress intended to allow petitioner to carry a check from one state into a second one, use it to defraud a merchant in interstate commerce, attempt to avoid detection by returning to the original state and then avoid federal prosecution because the government cannot prove exactly when the petitioner signed the check. Such a construction stretches the rule of lenity beyond all reason and gives to Section 2314 "the narrowest possible meaning in complete disregard of the purpose of the legislature." *United States* v. *Bramblett*, 348 U.S. 503, 510 (1955) (footnote omitted).

C. Appellate courts interpreting Sections 659, 2312, 2313 and 2315 of Title 18, which are companion provisions to Section 2314, have recognized that the "interstate commerce" requirement in those sections has a broader connotation than the crossing of a state boundary. See, *e.g.*, *United States* v. *Garber*, 626 F.2d 1144 (3d Cir. 1980) (18 U.S.C. 659); *Barfield* v. *United States*, 229 F.2d 936 (5th Cir. 1956) (18 U.S.C. 2312); *United States* v. *Goble*, 512 F.2d 458 (6th Cir. 1975) (18 U.S.C. 2313); *United States* v. *Luman*, 624 F.2d 152 (10th Cir. 1980) (18 U.S.C. 2315). It is incongruous to apply those provisions to various transactions that do not involve crossing a state line, but to limit Section 2314 to forgeries that occur prior to crossing the state border.

Such inconsistent treatment of basically the same language is not the product of a carefully reasoned analysis of the language of Section 2314, its legislative intent and its relationship to similar provisions (J.A. 82). Instead, the basis for the limiting construction arose from the fortuity that in one case the government was able to prove that the security had been forged before it was transported across state lines. See *Castle* v. *United States*, 287 F.2d 657 (5th Cir. 1961). The same appellate court, subsequently construing *Castle*, converted this factual oddity into a required element of the offense. *United States* v. *Owens*, 460 F.2d 467 (5th Cir. 1972). After the requirement was once asserted as the basis for decision, it simply was followed by other courts without any reevaluation of its validity. See *United States* v. *Sparrow*, 635 F.2d 794 (10th Cir. 1980) (en banc); *United States* v. *Hilyer*, 543 F.2d 41 (8th Cir. 1976). Thus, the Third Circuit in this case is the first court to interpret Section 2314 properly.

ARGUMENT

A. THE LANGUAGE OF SECTION 2314 DOES NOT PRECLUDE ITS APPLICATION TO THE FACTS OF THIS CASE

The third paragraph of 18 U.S.C. 2314 makes it a federal crime to "transport[] in interstate or foreign commerce" any forged security. Section 10 of Title 18 provides, in part, that "[t]he term 'interstate commerce', as used in this title, includes commerce between one State * * * and another State * * *." The issue posed in this case is whether the government proved that the two forged checks that were the basis of petitioner's convictions under Section 2314 were "transported in interstate commerce" within the meaning of the statute. The evidence, as the court of appeals found (J.A. 87), showed that "on each occasion [petitioner] made a trip from Ohio to Pennsylvania, carrying with him a check that was forged either in Ohio or Pennsylvania * * *."

Petitioner argues that this is not enough to satisfy a "literal" reading of Section 2314, because an element of the offense is that the security was forged before it crossed a state border. If he is correct that the statute contains such a requirement, we agree that he is entitled to reversal of his convictions, for the trial court's instructions to the jury did not require it so to find.

The problem with petitioner's "plain meaning" argument is that it depends upon the far from obvious proposition that "interstate commerce" means only crossing a state boundary—*i.e.*, once petitioner entered Pennsylvania he no longer was "in interstate commerce." An alternative interpretation of the statute, depending on the intended meaning of in-

terstate commerce, is that a security, having been transported across a state border, remains in interstate commerce until its travels are concluded within the destination state—and certainly so long as it remains in the hands of the "importer" who intends to deliver it as payment for goods purchased. Under this construction, the stolen checks were "in interstate commerce" at every point of their journey in Pennsylvania, including the point at which they were forged, until they were tendered to the merchants. It is therefore simply irrelevant whether the checks actually crossed the Ohio-Pennsylvania border in a forged condition.[6]

B. THE LEGISLATIVE HISTORY OF SECTION 2314 DEMONSTRATES THAT CONGRESS INTENDED THE "IN INTERSTATE COMMERCE" REQUIREMENT TO BE INTERPRETED EXPANSIVELY IN LINE WITH DECISIONS OF THIS COURT

1. Since there is no literal interpretation that precludes the application of Section 2314 to the facts of this case, the legislative history of the statute must be consulted to determine what Congress understood the phrase "in interstate commerce" to mean and whether its use in this context demonstrates a clear intent to have petitioner's conduct fall within the proscriptions of the statute.

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[6] This interpretation does no violence to the verb tenses used in Section 2314. Under the government's theory the checks are being transported in interstate commerce by petitioner until they are placed in the car or boat dealer's possession. At that time, petitioner knows the checks "to have been * * * forged" as required by the statute. Thus, all that matters is how broadly interstate commerce was intended to be applied by Congress.

The source for the "interstate commerce" element of Section 2314 is the National Motor Vehicle Theft Act, ch. 89, 41 Stat. 324, more commonly known as the Dyer Act. That statute was subsequently expanded, first in the National Stolen Property Act, ch. 333, 48 Stat. 794, to cover various items of stolen property, and then to cover forged securities in 1939. Act of Aug. 3, 1939, ch. 413, 53 Stat. 1178. There is virtually no discussion of the jurisdictional "interstate commerce" requirement in the legislative materials accompanying the extensions of the Dyer Act. See H.R. Rep. No. 1462, 73d Cong., 2d Sess. (1934); S. Rep. No. 538, 73d Cong., 2d Sess. (1934); S. Rep. No. 674, 76th Cong., 1st Sess. (1939); H.R. Rep. No. 422, 76th Cong., 1st Sess. (1939). Congress did, however, consider the question when it passed the Dyer Act in 1919. As the legislative history of that statute shows, the phrase "interstate commerce" was adopted against the backdrop of several decisions of this Court interpreting expansively Congress's power under the Commerce Clause (United States Constitution, Article I, Section 8, Clause 3). See *International Textbook Co.* v. *Pigg*, 217 U.S. 91 (1910); *Champion* v. *Ames*, 188 U.S. 321 (1903); *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U.S. 1 (1877), cited in H.R. Rep. No. 312, 66th Cong., 1st Sess. 3-4 (1919).

Representative Dyer, who drafted the Act, did not elaborate with regard to the exact breadth of the phrase "interstate commerce." He simply noted that "the matter would be construed by the Supreme Court," which caused him no concern because "[t]he Supreme Court has decided many times what is interstate commerce." 58 Cong. Rec. 5472 (1919). Thus, the 1919 discussion makes clear that the mean-

ing of "interstate commerce" should be ascertained from this Court's decisions interpreting that language in other contexts.[7]

Prior to the passage of the Dyer Act, this Court had settled that interstate commerce is a concept much broader than simply the act of crossing a state border. Indeed, in the *Champion* case cited by the House Report, the Court, in considering the scope of the Commerce Clause, discussed what Congress could do in keeping diseased animals out of interstate commerce. The Court had no difficulty in accepting that Congress could forbid the animals from entering the vehicles that would transport them across state lines. *Champion* v. *Ames*, *supra*, 188 U.S. at 358-359; *Reid* v. *Colorado*, 187 U.S. 137 (1902).

It was recognized in 1919 not only that interstate commerce began before actual movement across a state border, but also that it did not end simply because a state border had been crossed. In *Brown* v. *Houston*, 114 U.S. 622, 632, 634 (1885) (cited by the Court in *Champion* v. *Ames*, *supra*), the Court dismissed out of hand the idea that New York City could tax every car load or ferry that arrived from out of state merely because they had crossed the border into the destination state. The Court noted simply that this "would * * * be a regulation of, and restraint upon inter-State commerce." *Brown* v. *Houston*, *supra*, 114 U.S. at 634.

Indeed, there were numerous cases prior to 1919 that interpreted "interstate commerce" as a concept that embraced more than the act of crossing a state

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[7] Indeed, Representative Dyer even recognized that the phrase had no fixed meaning and thus could expand with time to encompass new forms of commerce. 58 Cong. Rec. 5471 (1919).

boundary. See, *e.g.*, *Western Union Telegraph Co.* v. *Foster*, 247 U.S. 105, 113 (1918); *Illinois Central R.R.* v. *Fuentes*, 236 U.S. 157, 163 (1915); *Baer Brothers Mercantile Co.* v. *Denver & R.G. R.R.*, 233 U.S. 479, 490-491 (1914); *Texas & N.O. R.R.* v. *Sabine Tram Co.*, 227 U.S. 111, 122-123 (1913); *Southern Pacific Terminal Co.* v. *ICC*, 219 U.S. 498, 527 (1911); *Kelley* v. *Rhoads*, 188 U.S. 1 (1903); *Coe* v. *Errol*, 116 U.S. 517, 528 (1886). And, as we have seen above, it was because of this body of law that the phrase "in interstate commerce" was selected as the jurisdictional basis for the Dyer Act. If Congress had wanted to make federal jurisdiction in these cases turn on the crossing of a state boundary, it could easily have defined the crime in terms of transportation across a state line. By choosing the term interstate commerce, which it recognized as having a broader meaning, Congress must be taken to have intended to cast a wider net.[8]

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[8] We note that not every court that has interpreted the Dyer Act has recognized this legislative intent. Thus, in cases under Section 2312 where the automobile is acquired legally, but the defendant subsequently decides to convert the car to his own use, some courts discuss whether the intent to steal is formed before a state border is crossed. See, *e.g.*, *United States* v. *Wyatt*, 437 F.2d 1168, 1171 (7th Cir. 1971); *United States* v. *Baker*, 429 F.2d 1344 (7th Cir. 1970); *Jarvis* v. *United States*, 312 F.2d 563, 564 (9th Cir. 1963). These cases, however, did not involve a fact pattern that made the timing of the intent a significant issue.

Other cases, although not really faced with the factual issue either, have more carefully described the timing of the intent as "formed * * * during the interstate commerce," *United States* v. *Chatham*, 568 F.2d 445, 451 & n.11 (5th Cir. 1978), in apparent recognition that the crossing of the state border is not the appropriate criterion. In a case where it was impossible to ascertain when the intent had been formed, the

Although Congress did not revisit this issue in the subsequent extensions of the Dyer Act to include stolen property in 1934 and forged securities in 1939, we can only assume that the same reasons motivated the decision to retain the standard. Certainly, this Court continued to interpret the phrase "in interstate commerce" in other contexts as it had prior to passage of the 1919 Act.[9] See, *e.g.*, *Baltimore & O.R.R.* v. *Brady*, 288 U.S. 448 (1933); *Carson Petroleum Co.* v. *Vial*, 279 U.S. 95 (1929); *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U.S. 83 (1927); *Hughes Brothers Timber Co.* v. *Minnesota*, 272 U.S. 469 (1926); *Champlain Realty Co.* v. *Brattleboro*, 260 U.S. 366 (1922); *Philadelphia & Reading Ry.* v. *Hancock*, 253 U.S. 284 (1920).

Fourth Circuit upheld the jury's "finding that the intention to appropriate the vehicle to her own use was formed before the conclusion of her interstate travels." *United States* v. *Diodati*, 355 F.2d 806 (1966).

Thus, the better reasoned opinions interpreting Section 2312 have adopted the view of the Third Circuit in this case and the views of other courts interpreting other stolen property provisions based on interstate commerce. See cases cited pages 20-23, *infra*.

[9] Indeed, this Court has continued to recognize that "interstate commerce" in statutes has a broader meaning than merely the crossing of a state line. See, *e.g.*, *Maryland* v. *Louisiana*, No. 83, Orig. (May 26, 1981), at 29; *Kosydar* v. *National Cash Register Co.*, 417 U.S. 62, 66-67 (1974); *California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366, 369 (1965); *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U.S. 157, 163 (1954); *Empresa Siderurgica* v. *County of Merced*, 337 U.S. 154, 157 (1949); *Richfield Oil Corp.* v. *State Board of Equalization*, 329 U.S. 69 (1946); *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U.S. 498, 503-504 (1942).

2. There are, moreover, persuasive indications that in enacting the National Stolen Property Act in 1934 and Section 2314 in 1939, Congress did not intend to impose on the government the burden of proving that securities were forged before they crossed a state line.

The general problem to which the National Stolen Property Act was addressed was described by the House Judiciary Committee in its report recommending passage (H.R. Rep. No. 79, 71st Cong., 2d Sess. 2 (1929)):

> With the growth of transportation in this country there has come into existence the interstate "fence"; so that goods which are stolen from railroad cars, transportation companies, or are stolen in great cities and gotten onto railroads and sent over State lines are received and with relative safety disposed of by criminals in other places than the scene of the crime, making the matter of detection more difficult, and, of course, extending the area in which the safe disposition of stolen property may be made.

Likewise, Rep. LaGuardia, the sponsor of the bill in the House, observed that its "sole purpose" was to "meet a condition which has been brought about by criminals who understand existing conditions and who take advantage of the quick methods of transportation and can select the spot where they send the loot in order to avoid prosecution and to carry on their criminal activities with impunity." 72 Cong. Rec. 3113 (1930).

Congress recognized that although "[m]ost of the States have laws covering the underlying principle of [the Act], * * * the jurisdiction of the State court does not reach into all of the States, especially when the matter of producing witnesses and bringing to

the court the proof is concerned." H.R. Rep. No. 2528, 70th Cong., 2d Sess. 2 (1929). Accordingly, in enacting the National Stolen Property Act, Congress sought to make it " 'simpler and easier' " to apprehend and prosecute the person who steals merchandise and transports it across state lines. H.R. Rep. No. 79, *supra*, at 2 (quoting M.O. Garner, General Counsel of the National Surety Co., who testified concerning the proposed legislation before the House Judiciary Committee). As this Court has observed, Congress "contemplated coming to the aid of the states in detecting and punishing criminals whose offenses are complete under state law, but who utilize the channels of interstate commerce to make a successful getaway and thus make the state's detecting and punitive processes impotent." *United States* v. *Sheridan*, 329 U.S. 379, 384 (1946) (footnote omitted).

It is inconceivable that Congress, having adopted a statute with a broad jurisdictional provision and with the express intent to keep crime out of interstate commerce, would have intended to impose upon the government the often impossible burden of proving when the security was forged during the course of its interstate transportation. In few, if any, cases is the government able to prove precisely when a forgery of securities occurs.[10] Unlike travel by individuals on interstate routes or the presentation of forged securities, the actual forgery is likely to be an unwitnessed event occurring in a private place.[11]

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[10] But see *Castle* v. *United States*, 287 F.2d 657 (5th Cir. 1961) (Defendant confessed to forging the checks in Pennsylvania and cashing them in Texas).

[11] Although prosecutions under other statutes, especially for mail fraud, are feasible where the forged check has actually been presented to the out-of-state bank for payment

Moreover, it is wholly inconsistent with the entire tenor of the legislative history behind Section 2314 to allow an individual to cross a state line to tender a forged check and then escape federal criminal liability merely by delaying the actual forgery until he reaches the destination state. While petitioner is correct that criminal statutes should be construed strictly, "this does not mean that every criminal statute must be given the narrowest possible meaning in complete disregard of the purpose of the legislature." *United States* v. *Bramblett*, 348 U.S. 503, 510 (1955) (footnote omitted). See also *Huddleston* v. *United States*, 415 U.S. 814, 831 (1974); *United States* v. *Bass*, 404 U.S. 336, 351 (1971); *American Fur Co.* v. *United States*, 27 U.S. (2 Pet.) 358, 367 (1829); *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820).

Our more expansive interpretation of the interstate commerce requirement in Section 2314 is based on the same reasoning as that adopted by the Court in *United States* v. *Sheridan*, *supra*,[12] in interpreting

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(see *Pereira* v. *United States*, 347 U.S. 1 (1954)), the facts of this case demonstrate that victims will often not attempt to negotiate checks when they have ascertained that the checks are worthless. Indeed, the weakness of petitioner's proposed construction of Section 2314 is most clearly demonstrated by noting that if these victims had attempted to cash the checks so that they would have been returned to the bank in Youngstown that would have satisfied the jurisdictional requirement as interpreted by this Court in *Pereira*.

[12] Indeed, if anything, our position is stronger in light of the use of the general phrase interstate commerce which can easily be read to apply to petitioner's situation. In order to interpret the fraudulent intent requirement as the Court did in *Sheridan* it was forced to reduce the requirement to a mat-

the "intent to defraud" requirement in Section 2314. In *Sheridan* the defendant had cashed checks in Michigan that were drawn on Missouri banks. His defense was that he had not caused the checks to be transported because he did not care what happened to them after they were cashed and that he certainly lacked any fraudulent intent to transport the checks in interstate commerce. He based his interpretation, as does petitioner here, solely on a literal reading of the statute. The Court rejected the argument, however, stating "we do not believe that Congress intended to restrict the prohibited transportation of * * * securities * * * to situations where it would be effective to complete a specific fraud * * *. The intent was more general." 329 U.S. at 384-385. Similarly, Congress did not intend to prosecute frauds perpetrated on interstate commerce with forged checks only where the forgeries occurred before a state line was crossed.

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ter of procedure. *United States* v. *Sheridan*, *supra*, 329 U.S. at 385 n.11.

The Court also relied upon Congress's desire to eliminate "the interstate traffic in unlawfully obtained motor vehicles" in holding that the word "stolen" in the Dyer Act should not be limited to common law larceny. *United States* v. *Turley*, 352 U.S. 407, 417 (1957). As the Court pointed out: "Congress presumably sought to meet the need for federal action effectively rather than to leave loopholes for wholesale evasion." *Id.* at 416-417 (footnote omitted). Similarly, in light of its desire to crush fraud in interstate commerce, Congress could not have intended to allow someone to escape prosecution for transporting a forged security by asserting that the check was not forged until it was in the destination state.

C. DECISIONS INTERPRETING THE PHRASE "INTERSTATE COMMERCE" IN OTHER CRIMINAL STATUTES SUPPORT THE CONSTRUCTION GIVEN SECTION 2314 IN THIS CASE

The Third Circuit's interpretation of the "interstate commerce" requirement brings it into line with interpretations previously accorded to similar language in related criminal statutes. In prosecutions under 18 U.S.C. 2313, for the sale or receipt of stolen vehicles, under 18 U.S.C. 2315—which was enacted as part of the National Stolen Property Act—for the sale or receipt of other types of stolen property, and under 18 U.S.C. 659, for theft from interstate or foreign commerce, courts have consistently recognized the continuing presence of federal jurisdiction after a state line crossing has occurred.

In *United States* v. *Tobin*, 576 F.2d 687 (5th Cir.), cert. denied, 439 U.S 1051 (1978), for example, agents purchased two statues from the defendants in Florida at least two years after they had been transported to that state following their theft in Illinois. The defendant argued that, even if the statues were once moving in interstate commerce, the evidence showed that they had "come to rest" and lost their interstate character by reaching the state where they were intended to be sold. The court rejected this position stating that "[s]o long as its movement within the destination state can be considered a continuation of the movement that began out of state the [jurisdictional] prerequisite of 18 U.S.C. § 2315 is satisfied." 576 F.2d at 692.

Likewise, in *United States* v. *Garber*, 626 F.2d 1144, 1148 (3d Cir. 1980), the court of appeals, addressing a similar issue in the context of Section 659, held that "[d]elays enroute do not deprive shipments of continued characterization as interstate or foreign

so long as the goods have not yet reached their destination" (emphasis added). See also *United States* v *Luman*, 624 F.2d 152, 155 (10th Cir. 1980) (18 U.S.C. 2315); *United States* v. *Licavoli*, 604 F.2d 613, 624-625 (9th Cir. 1979), cert. denied, 446 U.S. 935 (1980) (18 U.S.C. 2315); *United States* v. *Thies*, 569 F.2d 1268, 1273 (3d Cir. 1978) (18 U.S.C. 2315); *United States* v. *Hiscott*, 586 F.2d 1271, 1274 (8th Cir. 1978) (18 U S.C. 2313); *United States* v. *Goble*, 512 F.2d 458, 469 (6th Cir. 1975) (18 U.S.C. 2313); *United States* v. *Astolas*, 487 F.2d 275, 280-282 (2d Cir. 1973), cert. denied, 416 U.S. 955 (1974) (18 U.S.C. 659); *United States* v. *Maddox*, 394 F.2d 297 (4th Cir. 1968) (18 U.S.C. 659). To be sure, Sections 2313, 2315 and 659, by their terms, apply to goods "moving as, or which are a part of, or which constitute interstate commerce or foreign commerce." Although this language differs from that of Section 2314, there is, as the court of appeals observed (J.A. 85), "no reason to apply a different meaning in the factual context presented here." See also *United States* v. *Sheridan*, *supra*, 329 U.S. at 383-384.

This is borne out by the legislative history of these provisions. When the Dyer Act was passed, it contained one provision making it unlawful to transport a stolen vehicle "in interstate * * * commerce" and another to receive a stolen car "moving as, or which is a part of, or which constitutes interstate * * * commerce" (41 Stat. 324). During the debate in the House, Representative Anderson noted (58 Cong. Rec. 5472 (1919); emphasis added):

> In the definition under section 2 interstate commerce means transportation from one State to another, while if you refer to section 4 you find there you have a vehicle or motor car *constituting*

> interstate or foreign commerce, and you scarcely have a sensible section.

Representative Dyer, the author of this language, responded (*ibid.*; emphasis added):

> I will say to the gentleman that if there is any difference there, *which I do not see*, the matter would be construed by the Supreme Court, which has passed many times upon what is meant by interstate and foreign commerce.

Thus, contrary to the suggestion in petitioner's brief (Pet. Br. 19), the best evidence available indicates that the difference in language was not "obviously" intended to effect a difference in the reach of the two provisions with regard to what is meant by interstate commerce.

Indeed, this Court recognized that the receipt of stolen goods was merely "a final step in the use of interstate transportation to promote the scheme of its unlawful disposition and the withholding of it from its owner." *Brooks* v. *United States*, 267 U.S. 432, 439 (1925). Thus, it was implicitly recognized that the movement of the car within the destination state prior to the delivery was still interstate transportation. Thus, the two provisions should be read in tandem as describing two stages of a continuous movement in interstate commerce. See *United States* v. *Meek*, 388 F.2d 936, 938 (7th Cir.), cert. denied, 391 U.S. 951 (1968).

Consistent with this view, appeals courts have construed 18 U.S.C. 2312, which deals with the interstate transportation of stolen vehicles and has the same jurisdictional language as Section 2314, no differently than they have construed the criminal statutes discussed above. In *Barfield* v. *United States*, 229 F.2d 936 (5th Cir. 1956), the court of appeals held that the violation of Section 2312 does not neces-

sarily require the "actual, physical driving *across* a state line by the accused." 229 F.2d at 939 (emphasis added). Rather, "any driving, whether wholly within the state of origin, state of destination, or from and to, if done as a substantial step in the furtherance of the intended interstate journey is * * * within the act." *Ibid.* (footnote omitted). See also *United States* v. *Lambert*, 580 F.2d 740, 743 (5th Cir. 1978); *United States* v. *Engle*, 429 F.2d 1325, 1326 (10th Cir. 1970).

Additionally, in *United States* v. *Ajlouny*, 629 F.2d 830 (2d Cir. 1980), cert. denied, 449 U.S. 1111 (1981), the court in effect adopted the same view as the *Barfield* court with respect to the concept of "foreign commerce" in Section 2314 itself. There, the court held that "[a] shipment is sufficiently 'in foreign commerce' for purposes of [the statute] once property bound for a foreign destination arrives in a customs area, " even though it has not yet left the country. 629 F.2d at 837. Thus, the weight of the judicial authority interpreting the "interstate commerce" language has taken a position consistent with that of the Third Circuit.

We recognize that three courts of appeals have held that in a prosecution under Section 2314 for interstate transportation of a forged security the government must prove that the securities were forged before they were transported into the destination state. *United States* v. *Owens*, 460 F.2d 467 (5th Cir. 1972); *United States* v. *Hilyer*, 543 F.2d 41 (8th Cir. 1976); *United States* v. *Sparrow*, 635 F.2d 794 (10th Cir. 1980) (en banc). These decisions, however, are not persuasive authority for petitioner's position.

As the Third Circuit explained in its opinion, the original Fifth Circuit decision which imposed the re-

quirement that the government prove that a security had been forged before it crossed a state boundary was the product of a "curious metamorphosis" in the law rather than a carefully considered examination of the statute's language and intent (J.A. 82). In *Castle* v. *United States*, 287 F.2d 657 (5th Cir. 1961), the evidence proved that the defendant had forged a money order in one state and cashed it in another. The court quite properly held that this was sufficient to satisfy the "in interstate commerce" requirement. This factual circumstance in *Castle* suddenly was elevated to a jurisdictional element of the crime by the same court in *United States* v. *Owens*, 460 F.2d 467 (5th Cir. 1972), although *Castle* did not address, and had no reason to consider, whether other facts might also satisfy the statute's interstate commerce requirement.

The evidence in *Owens* showed that the defendant's brother stole money order blanks in New Jersey, which the defendant later attempted to cash in a forged condition in Louisiana. In reversing the defendant's conviction, the court held that the government had failed to establish that the forgery occurred outside of Louisiana. But the United States did not there suggest the irrelevance of this factual inquiry; rather it argued only that the evidence was sufficient to show that the forgery had taken place in New Jersey. Furthermore, in declaring that "the Government must show that the instrument traveled interstate [*i.e.*, crossed a state border] in its forged or altered condition" (460 F.2d at 469), the court did not explain its reasoning or offer any analysis whatever of Section 2314's jurisdictional requirement. Instead, like petitioner in this case, the court was content to look only far enough to satisfy itself that

there was an ambiguity in the statute and therefore construe it so as to preclude the prosecution, notwithstanding the violence it did to Congress's intent. For their part, the *Hilyer* and *Sparrow* courts simply followed *Owens* without reconsidering its validity.

Thus, the Third Circuit is the only court that has attempted to interpret Section 2314 with an eye to the specific language Congress employed and with concern for how related provisions had been interpreted by other courts. Its decision brings Section 2314 in line with the other, comparable criminal provisions and makes it consistent with the clear intent of the Congress.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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